Boustead Estates Agency Sdn Bhd v Pentadbir Tanah, Baling, Kedah

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO K–01–38 OF 1998
GOPAL SRI RAM, ZULKEFLI AND ZAINUN ALI JJCA
4 JUNE 2007

Land Law — Acquisition of land — Compensation — Compulsory acquisition — Severance and/or injurious affection to remainder of land lots — Damage sustained or likely to be sustained — Whether severance had consequence of making it more difficult and expensive to work the land — Whether applicant ought to be compensated — Land Acquisition Act 1960

This was the applicant's appeal against the decision of the High Court at Alor Setar pursuant to a reference under s 36(1) of the Land Acquisition Act 1960. The learned judge of the High Court had dismissed the applicant's claim for damage sustained or likely to be sustained due to severance and/or injurious affection to the remainder of the land Lots No 88 and 243 belonging to the applicant, which according to the applicant had depreciated at the market value by 30% (approximately). The issue before the court was whether the applicant should be compensated for the severance and injurious affection.

Held, allowing the appeal:

(1) The learned judge erred in holding that there was an enhancement in value when there was no evidence of such enhancement. The land lots in question is a working palm oil estate, and the building of a road or highway across the estate severing it into two and opening up the area to traffic cannot in any way enhance or better the value of the land. What it does, is to create problems with regard to access and transportation of materials and harvest into and out of the land. As a result of the acquisition, the applicant's land can no longer be occupied as one compact holding. The severance had the consequence of making it more difficult and expensive to work the land (see para 8).

(2) There was no avenue for the applicant to have any means of access between the two severed portions of the land since no access road can be built to join the main road that would be built across the acquired land (s 85(1) of the Road Transport Act 1987). There would even be a need for the applicant to construct fencing along the side of the severed portions of the land bordering the main road that would be built and this would cause additional expenses; and this had to be borne out by the applicant (see paras 9–10).

[Bahasa Malaysia summary

Ini adalah rayuan pemohon terhadap keputusan Mahkamah Tinggi Alor Star berkaitan dengan rujukan kepada s 36(1) Akta Pengambilan Tanah 1960. Hakim Mahkamah Tinggi telah menolak permohonan pemohon terhadap kerosakan yang dialami atau berkemungkinan dialaminya kerana pemisahan dan/atau kesan merugikan terhadap baki tanah Lot No 88 dan 243 di mana harga pasarannya telah susut pada anggaran 30%. Isu di hadapan mahkamah adalah sama ada pampasan disebabkan oleh pemisahan dan kesan merugikan itu boleh dibenarkan.

Diputuskan, membenarkan rayuan tersebut:

(1) Hakim telah terkhilaf bila mengatakan bahawa telah berlaku peninggian nilai hartanah sedangkan tiada sebarang keterangan membuktikannya. Lot-lot tersebut adalah ladang kelapa sawit, maka pembinaan jalan raya atau lebuh raya melintasi ladang yang memisahkannya kepada dua dan membuka laluan kenderaan, tidak boleh sesekali meningkat atau memperbaiki nilai tanah tersebut. Apa yang telah berlaku adalah mewujudkan masalah berkaitan jalan masuk dan pengangkutan dan pemungutan bahan-bahan keluar masuk dari tanah tersebut. Disebabkan oleh pengambilan tersebut, tanah pemohon tidak boleh diduduki sebagai satu pemegangan padat. Pemisahan tersebut mengakibatkan kerumitan kepada pemohon dan kos penyelenggaraan tahan tersebut menjadi lebih mahal.

(2) Tidak ada cara bagi pemohon untuk menyambung di antara dua bahagian tanah yang terpisah kerana jalan penyambung tidak boleh dibina bagi menyambungkan jalan utama yang kelak dibina melintasi tanah yang diperoleh itu (s 85(1) Akta Pengangkutan Jalan 1987). Pemohon juga terpaksa membina pagar di sepanjang tanah yang telah dipisahkan membatasi jalan utama yang kelak dibina dan ini akan mengakibatkan perbelanjaan tambahan yang terpaksa dipikulnya (lihat perenggan 9–10).]

Notes

For cases on compensation for acquisition of land, see 8(2) *Mallal's Digest* (4th Ed, 2006 Reissue) paras 1843–1875.

Legislation referred to

Land Acquisition Act 1960 ss 8, 36(1)
Road Transport Act 1987 s 85(1)

Wong Choong Wah (Sharon Tan Geok Bee with him) (Skrine & Co) for the appellant/applicant.
Dato' Zakiah bte Kassim (Kedah State Legal Adviser) for the respondent.

Zulkefli JCA (delivering judgment of the court):

[1] This is an appeal by the applicant from the decision of the High Court at Alor Setar pursuant to a reference under s 36(1) of the Land Acquisition Act 1960

('the Act'). The learned judge of the High Court had dismissed the applicant's claim for damage sustained or likely to be sustained due to severance and/or injurious affection to the remainder of the land Lots No 88 and 243, Mukim of Tawar, District of Baling, State of Kedah Darul Aman belonging to the applicant.

[2] The declaration of intended acquisition of the scheduled lands under s 8 of the Act was published in the Government of Kedah Darul Aman Gazette on 8 December 1994 under Gazette Notification No 760. The material date for the purposes of determining the market value is thus 8 December 1994. The purpose of the acquisition as stated in the said Gazette Notification is as follows:

> Tujuan Awarn iaitu Cadangan Pengambilan Balik Tanah untuk Projek Jalan Raya Timur-Barat Fasa II Pake] V — Titi Karangan Ke Kampong Kangar, Negeri Kedah Darul Aman.

[3] The particulars of the property scheduled for acquisition are as shown below:

Lot No	Title	Original Area	Area to be acquired
		Acre Rood Pole	Acre Rood Pole
88	G 36807	210 1 35	6 1 24.32
243	G 25100	418 2 32	3 0 36.00
		Total acquired area	9 2 20.32

[4] The Scheduled Lands formed part of a large rubber and palm estate known as Stothard Estate which comprised 2,429.2895 acres.

[5] On 14 October 1997, the land administrator awarded the applicant the sum of RM51,600 for the acquisition on Lot 243 and RM102,432 for the acquisition on Lot 88 (equivalent to the sum of RM16,000 per acre), as well as a drainage cost of RM16,000. The total compensation should be RM170,032 for the scheduled lands. Payment was however made only for the award on Lot 88 and for drainage cost, amounting to RM118,432.

[6] The applicant referred the matter to the High Court for non-payment of the sum of RM51,600 due for the acquisition on Lot 243 and for failure by the land administrator to award severance and injurious affection for both Lots 88 and 243. On 18 May 1998, the learned judge of the High Court recorded the parties' consent for the payment of the sum of RM51,600 but dismissed the applicant's objection on the claim for severance and injurious affection for both Lots 88 and 243. The applicant is now appealing only on this claim for severance and injurious affection.

[7] At the outset we noted that the value of the land is not disputed. The respondent paid, and the applicant accepted the sum of RM16,000 per acre. It is not in dispute that the acquired land cuts the estate into two. The area of land affected by this division is approximately 364.29 acre. The dispute is whether the applicant should be compensated for the severance and injurious affection.

The estimated depreciation of the market value is 30% and the applicant's claim for the severance and injurious affection for both Lots 88 and 243 is therefore for an amount of RM16,000 x 30% x 364.29 acres = RM1,748,592.

[8] The learned judge of the High Court in his grounds of judgment had stated that even though there is a severance taking place in respect of the said Lots 88 and 243, the severance in this case had not resulted in the remaining portion of the land lots becoming unproductive to be worked on or that there has been an injurious affection to the land. The learned judge took the view that the construction of the highway project across the two divided portions of the land would in fact facilitate the movement into and out of the said land and this would enhance the value of the land. With respect, we could not agree. The learned judge erred in holding there is an enhancement in value when there is no evidence of such enhancement. We find the land lots in question are a working palm oil estate, and the building of a road or highway across the estate severing it into two and opening the area up to traffic cannot in any way enhance or better the value of the land. What it does is to create problems with regard to access and transportation of materials and harvest into and out of the land. As a result of the acquisition the applicant's land can no longer be occupied as one compact holding. The severance has the consequence of making it more difficult and expensive to work the land. In the applicant's valuation report, it is stated that access to the severed portion of the estate is necessary to facilitate transportation. See p 54 of the appeal record].

[9] It has also to be stated here that there is no confirmation whatsoever that the respondent has agreed to provide an underpass or overpass between the two severed portions of the estate. If that is the case then the applicant would be deprived of a direct access between the said two severed portions of the land. The learned judge of the High Court in our view had made an erroneous finding when he stated that the remaining portion of the land lots possess a frontage that would allow access to the main road or highway that would be built across the acquired land. On this point we have to state the law with regard to the construction of access to existing roads. Section 85(1) of the Road Transport Act 1987 provides as follows:

> (1) No person shall —
>
> (a) Construct any access road (including paths, driveways or other means of access, whether public or private) to join any road.

[10] Based on the above provision of the law there is therefore no avenue for the applicant to have any means of access between the two severed portions of the land since no access road can be built to join the main road that would be built across the acquired land. We would agree with the contention of learned counsel for the applicant that there would even be a need for the applicant to construct fencing along the side of the severed portions of the land bordering the main road that would be built and this would cause additional expenses which have to be borne out by the applicant.

[11] For the reasons already stated we would allow the appeal to the extent that the award made by the respondent is varied to include an award for severance and

injurious affection for an amount of RM1,748,592 to be paid by the respondent to the applicant. There would be no order as to costs arising from this appeal. The deposit paid by the applicant is to be refunded to the applicant.

Appeal allowed.

Reported by Ashgar Ali Ali Mohamed